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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:

Amendment of 47 C.F.R.
§ 73.606(b), Television
Table of Allotments (Big
Bear Lake, California and
Yucaipa, California)

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Reply Reference No. 1800D5

To: Chief, Policy and Rules Division
Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Gulf-California Broadcast Company, Inc., licensee
of Station KESQ-TV, Palm Springs, California ("KESQ"),
hereby opposes the Petition for Reconsideration filed in
the above-captioned proceeding by KBBL, Inc., permittee
of Channel 59 in Big Bear Lake, California ("KBBL").

BACKGROUND.

1. In 1984, the FCC allocated Channel 59 to Big
Bear Lake, a resort community northeast of Los Angeles.
Big Bear Lake is located in a valley ringed by
mountains; there is no other television service licensed
to Big Bear Lake or elsewhere in the Big Bear Lake
valley.

2. Despite the fact that Channel 59 was allocated in 1984, there is still no operating station in Big Bear Lake. This is the result of continuous efforts KBBL has pursued since 1988 to secure FCC consent to a proposed modification of the Channel 59 construction permit to specify a transmitter site which would provide city-grade coverage over the populous and well-served San Bernardino-Riverside area south/southwest of Big Bear Lake, but which would not provide city-grade service to any part of KBBL's community of license.

3. Having failed at both the staff and Commission levels to secure a waiver of the Commission's minimum coverage requirements to enable it to construct a transmitter which would serve populous areas far from its community of license, on September 14, 1992 KBBL filed with the Commission a Petition for Rulemaking seeking to amend the television table of allotments pursuant to Section 1.420(i) of the Commission's Rules¹ to delete Channel 59 from Big Bear Lake, and re-allocate

¹ Section 1.420(i) authorizes television permittees to seek modification of the table of allotments to specify a channel mutually exclusive to their present assignments, and to modify their authorizations accordingly, in cases where the change would result in a net service benefit for the communities involved. Modification of FM and TV Authorizations (New Community of License), 66 R.R. 2d 877 (1989), recon. granted in part, FM and TV Authorizations (Modification to Specify New Community of License), 68 R.R. 2d 644 (1990).

it to the small town of Yucaipa, California.² KBBL would presumably serve Yucaipa from the transmitter site specified in its Big Bear Lake modification application; operation from that site would provide a city-grade signal over Yucaipa.

4. By Order dated December 9, 1992, the staff denied KBBL's Petition for Rulemaking. KBBL filed a Petition for Reconsideration of the staff's decision on January 8, 1993; notice of the filing was published in the Federal Register on January 28, 1993.

DISCUSSION.

5. The staff denied KBBL's Petition for Rulemaking on three grounds: (1) that a freeze imposed by the Commission in 1987 on the creation of new television channel allotments precludes grant of KBBL's Petition; (2) that no grounds exist to justify a waiver of the freeze; and (3) that in any event Channel 59 should not be re-allocated to Yucaipa because, since Yucaipa is within the Riverside-San Bernardino Urbanized Area, re-allocation of Channel 59 would not result in a

² KBBL originally appealed the denial of its application to the United States Court of Appeals for the District of Columbia Circuit (No. 92-1227), but thereafter requested the court to hold the appeal in abeyance pending the filing and final disposition of, the Yucaipa Petition for Rulemaking.

net service benefit as required by Section 1.420(i) of the Rules. The staff was correct on all counts.

A. Grant of KBBL's Petition Is Precluded
by the Television Freeze.

6. The Commission's 1987 "Freeze Order"³ states clearly that "No petitions to amend the table [of allotments] will be accepted for [the freeze] areas." Id. at 2. The Appendix to the Freeze Order establishes the area within 280.8 kilometers of Los Angeles as such a "freeze area". Both the authorized transmitter site for Big Bear Lake and Yucaipa are within the Los Angeles freeze area -- the Big Bear Lake authorized transmitter site is 130 kilometers from Los Angeles; Yucaipa is 112 kilometers.

7. KBBL claims that the Freeze Order is inapplicable because the Channel 59 construction permit was issued prior to the effective date of the freeze (July 16, 1987), thus exempting KBBL from the freeze under the proviso in the Freeze Order that the Commission "will accept and process applications filed after the freeze that are mutually exclusive with applications filed before the freeze." Id.

³ Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, RM-5811, Mimeo No. 4074 (rel. July 17, 1987).

8. KBBL's argument ignores the plain language of the Freeze Order, which clearly exempts applications mutually exclusive to applications filed prior to the freeze that remain pending; the Channel 59 construction permit application had been filed and thereafter granted long prior to the date on which KBBL filed its Petition for Rulemaking. There is no application pending to which KBBL's proposed new allotment is mutually exclusive, and KBBL does not fall under the Freeze Order exemption.

9. The freeze is clearly applicable to applications filed pursuant to Section 1.420(i) of the Rules. The Commission has already held as much. See Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Appleton, New London and Suring, Wisconsin), Notice of Proposed Rule Making, 1993 FCC LEXIS 79, at note 8 (Jan. 8, 1993) ("...the Freeze Order applies in instances when, as here, a television licensee or permittee seeks to change its community of license and facilities to a site closer to a freeze area").

B. No Grounds Exist Warranting Waiver of the Freeze.

10. KBBL argues that even if the freeze is applicable to its Petition, the Freeze Order should be

waived to accommodate it because allocation of Channel 59 to Yucaipa would have "no effect" on the proposed Advanced Television ("ATV") allocations for Los Angeles. KBBL correctly notes that as part of its ongoing ATV allocation proceeding, the Commission's goal is to avoid adjacent-channel allotments located between 5 and 55 miles (or 88.5 kilometers) of each other.

11. In support of its claim that allocation of Channel 59 to Yucaipa would have no effect on the Los Angeles ATV proceeding, KBBL posits that if Channel 60 were allocated for ATV use in Los Angeles, as presently proposed by the Commission, a Channel 60 television facility would be constructed at Mt. Wilson, which is 97 kilometers from Yucaipa, in excess of the 88.5 kilometer spacing objective.

12. KBBL's position is based entirely on conjecture. As described in the attached Engineering Statement, there is reason to believe that Channel 60 could well be constructed at Sunset Ridge, the present transmitter site of no fewer than four other UHF broadcast facilities. Sunset Ridge is only 64 kilometers from Yucaipa, and 76 kilometers from KBBL's presently proposed transmitter site, for less than the Commission's 88.5 kilometer goal.

13. The Commission has already stated that waivers of the Freeze Order would be granted only for

"compelling reasons". Freeze Order at 2. The Commission has very rarely waived the Freeze Order. Factors the Commission has considered in the past have included the extent of spectrum congestion in the freeze area and whether the permittee's proposed move is towards or away from the freeze market. Applications of Greater Utica-Rome TV Servs., Inc. and Mohawk Valley Telecasters, Inc., Memorandum Opinion and Order, 7 FCC Rcd. 2252 Par. 6 (1992); Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Victoria and New Braunfels, Texas), Notice of Proposed Rulemaking, 6 FCC Rcd. 3368 Par. 5 (MMB 1991).

Here, KBBL seeks a waiver in one of the most difficult markets in the country for identifying additional ATV allotments, and seeks to allocate a new channel to a community located closer to the freeze area than its present assignment. KBBL has provided no justification whatever for a waiver of the Freeze Order in this proceeding.

C. Reallocation of Channel 59 Would Not Result in a Net Service Benefit.

14. KBBL has refused to comment on the staff's observation that Yucaipa is within the Riverside-San Bernardino Urbanized Area, declaring this conclusion to be premature; instead, KBBL has reserved the right to

comment on this issue should its Petition for Reconsideration be granted.

15. To the contrary, the Commission is authorized to return Petitions for Reconsideration which are "frivolous", "plainly do not warrant consideration", or in cases where there is not "sufficient reason...to justify the institution of a rulemaking proceeding". Sections 1.401(e); 1.407. In this case, the staff's judgment that KBBL's Petition should be returned was properly based in part on its judgment that the Petition did not propose a preferential arrangement of allotments as required by Section 1.420(i) of the Rules, pursuant to which the Petition was tendered.

16. First, the Commission will not re-allocate a channel pursuant to Section 1.420(i) if to do so would result in elimination of the sole television service from a community. Despite KBBL's contention otherwise, the Commission has not explicitly addressed whether this prohibition applies in cases such as that presented here, involving a proposal to eliminate an authorized but unconstructed service which represents the sole authorized service in a community. Strong reasons exist for holding that it does (see Santee Cooper B/Casting Co., 57 R.R. 2d 662 (Rev. Bd. 1984)), and for rejecting KBBL's proposal outright on those grounds.

17. Second, there is good reason to believe that adoption of KBBL's proposal would contravene the foremost television allotment priority, which is to ensure the existence of at least one television reception service to all parts of the United States. Sixth Report and Order, 41 FCC 148, 167 (1952). As noted in the attached Engineering Statement, there is a significant question whether, given the location of Big Bear Lake at the base of a major mountain range, Big Bear Lake residents receive any meaningful over-the-air television broadcast service. In stark contrast, Yucaipa is extraordinarily well-served, receiving, among others, Grade B service from Los Angeles area television stations.

18. As the Commission has noted, Yucaipa is located within the Riverside-San Bernardino Urbanized Area. It is approximately 13 miles from San Bernardino (population nearly 120,000), and 18 miles from Riverside (population nearly 171,000). The Commission explicitly stated when it adopted Section 1.420(i) that it would not condone Petitions in which a party "sought to re-allot a channel from a smaller, underserved and isolated community to a larger suburban community which has no local transmission service but which receives numerous signals from the adjacent metropolis....In such cases, ... no waiver to allow the change would be granted.

Retention of the sole local service in the rural community would be preferred, since a first local service is generally a higher priority than an additional allotment to a community that already enjoys local service." FM and TV Authorizations (Modification to Specify New Community of License), 68 R.R.2d 644 Par. 18 (1990).

The Commission rightly rejected KBBL's Petition as in violation of the underlying goals of Section 1.420(i) of the Rules.

CONCLUSION

WHEREFORE, for the reasons stated herein, Gulf-California Broadcast Company, Inc. requests that KBBL's Petition for Reconsideration be denied.

Respectfully submitted,

GULF-CALIFORNIA BROADCAST
COMPANY, INC.


By: Marcia A. Cranberg

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Dated: February 12, 1993

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TECHNICAL STATEMENT
IN SUPPORT OF OPPOSITION
TO PETITION FOR RECONSIDERATION
PREPARED FOR
GULF-CALIFORNIA BROADCAST COMPANY, INC.
PALM SPRINGS, CALIFORNIA

This technical statement was prepared on behalf of Gulf-California Broadcast Company, Inc. in support of Opposition to Petition for Reconsideration. This statement provides certain technical facts concerning the proposal of KBBL, Inc. to re-allot UHF TV Channel 59 from Big Bear Lake, California to Yucaipa, California.

Pertinent Distances

The following distances are important in this matter:

<u>From</u>	<u>To</u>	<u>Distance</u> (km)
Los Angeles	Big Bear Lake (CP)	130
Los Angeles	Yucaipa	112
Mt. Wilson	Yucaipa	97
Sunset Ridge	Yucaipa	64
Sunset Ridge	KBBL application	76

Potential ATV Impact

The FCC has stated that its goal for distant adjacent-channel allotment spacings for ATV channels is 88 km. In its sample ATV Table of Allotments, one of the channels proposed for Los Angeles was channel 60. While it is true that Yucaipa is greater than this distance from the likely transmitter site for channel 60 at Mt. Wilson, it is not necessarily true that channel 60 will ultimately be allotted to Los Angeles. It is possible that channel 60 could be allotted to one of the 4 existing full service UHF TV stations broadcasting from Sunset Ridge: KSCI, channel 18; KAGL, channel 30; KDOC-TV, channel 56; and KRCA, channel 62. Inasmuch as the Yucaipa allotment is substantially short-spaced to Sunset Ridge, the allotment of channel 59 to Yucaipa could adversely effect the FCC's goals in allotting ATV channels, should it become necessary for the Commission to allot channel 60 to one of these four stations.¹

Coverage of Big Bear Lake versus Yucaipa

Although Big Bear Lake is within the predicted Grade B contours of many Los Angeles stations most of which are located at Mt. Wilson, no actual over-the-air coverage can be expected from these stations. As Figure 1 illustrates, the terrain from Mt. Wilson to Big Bear Lake is quite mountainous. In fact, there is a mountain intervening on the path from Mt. Wilson to Big Bear Lake. On this basis it is reasonable to assume that Big Bear

¹The Los Angeles market has been one of the most difficult markets for the FCC to fully accommodate all TV broadcast stations with a new ATV channel allotment.

Lake would receive little over-the-air service from most stations in the area.

On the other hand Yucaipa is likely to receive at least a Grade B signal from most stations in the area. As an example, the terrain from Mt. Wilson to Yucaipa is quite favorable, as shown in Figure 2. It is likely that many of the Los Angeles stations with a predicted Grade B over Yucaipa actually provide meaningful service there.

Louis Robert du Treil, Jr.

Louis Robert du Treil, Jr.

February 11, 1993

TERRAIN PROFILE AT 88.6° TRUE
MT WILSON TO BIG BEAR LAKE

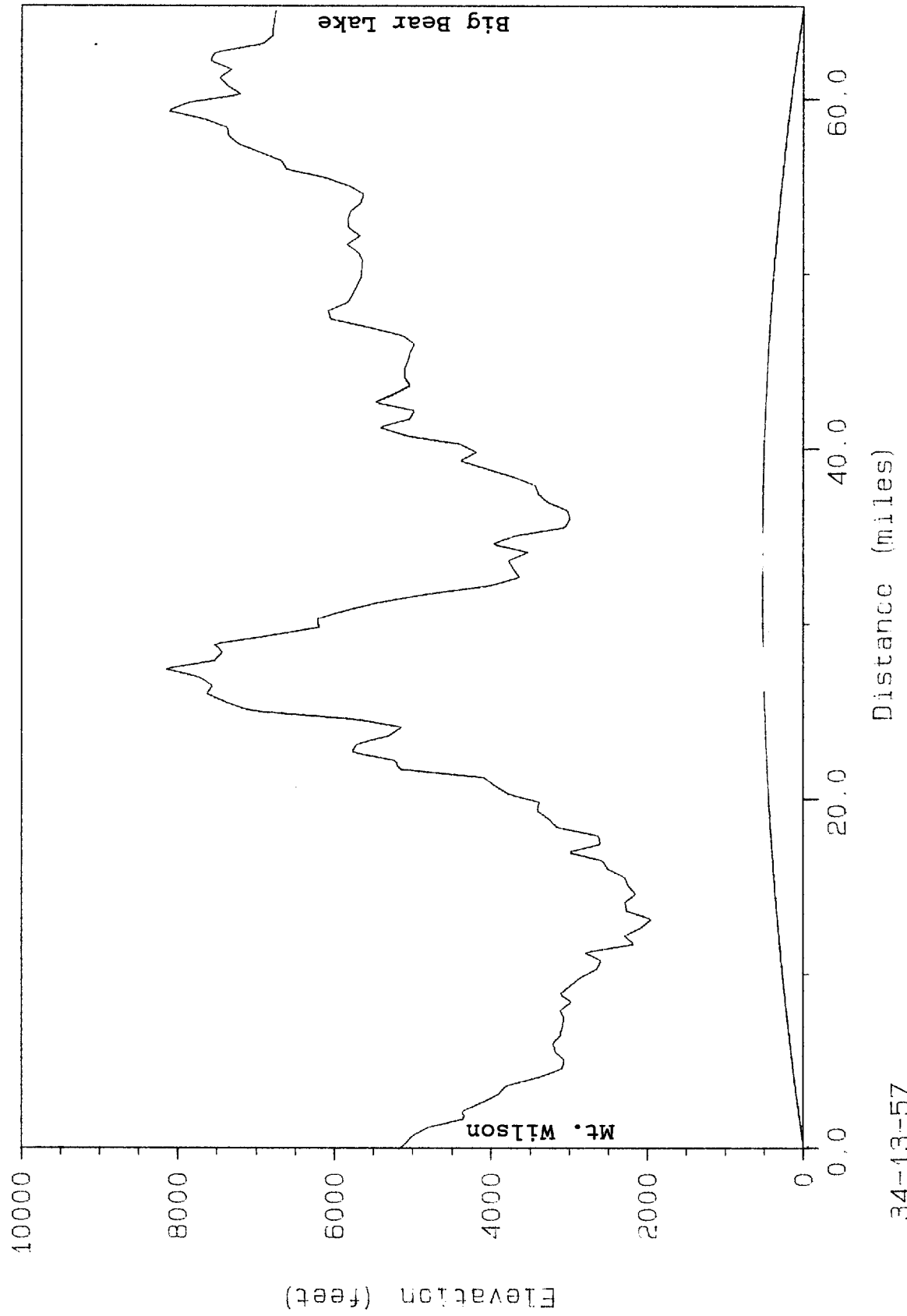


Figure 1

34-13-57
118-04-18

TERRAIN PROFILE AT 102.7° TRUE
MT WILSON TO YUCAIPA

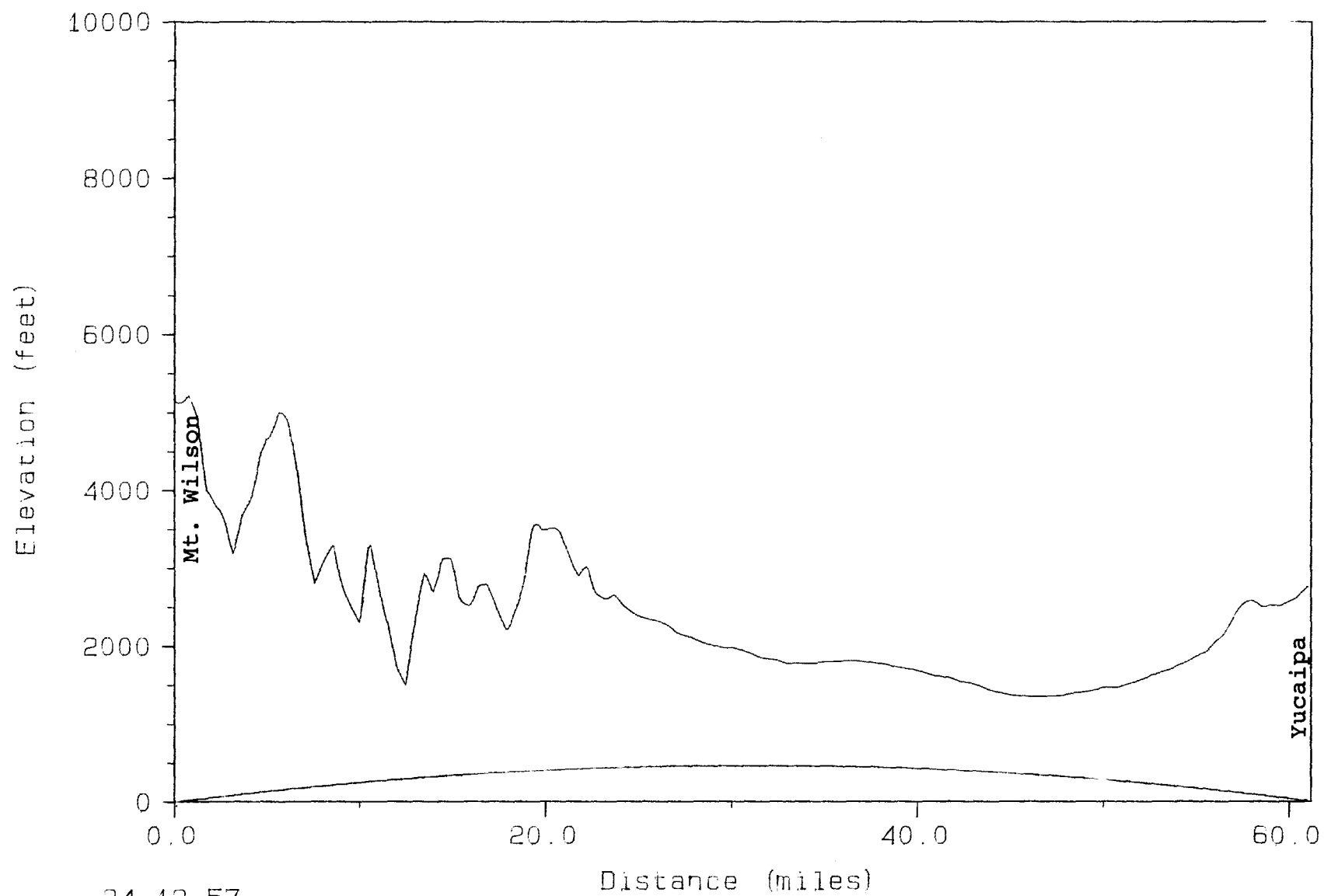


Figure 2

34-13-57
118-04-18

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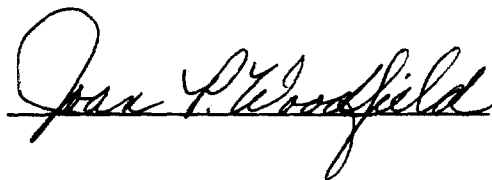
CERTIFICATE OF SERVICE

I, Joan Woodfield, a secretary in the law firm of
Arnold & Porter, hereby declare that a copy of the
foregoing Opposition to Petition for Reconsideration was
duly sent, this 12th day of February, via First Class
Mail, postage prepaid, to the following:

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